

# CITY OF SPRINGFIELD

CITY MANAGER'S OFFICE



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March 7, 2017

VIA EMAIL (Submitted via EFCS)

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

Re: Comment on Streamlining Deployment of Small Cell Infrastructure by  
Improving Wireless Facilities Siting Policies  
WT Docket No. 16-421

Dear FCC Secretary:

Thank you for allowing the City of Springfield, Oregon ("City") the opportunity to submit comment regarding the Petition for Declaratory Ruling filed by Mobilitie, LLC, on November 15, 2016 ("Mobilitie Petition"). The purpose of this comment is to (1) provide information requested by the Commission in the Public Notice dated December 22, 2016, and (2) to express the City's opposition to the Mobilitie Petition.

The City opposes the Mobilitie Petition and its proposed preemption of local government fees associated with use of public right-of-way (PROW). Mobilitie framed its petition to the FCC as necessary to allow deployment of small cell infrastructure, but in its applications and proposals to the City of Springfield, Mobilitie has asserted a right not just to deploy small cell equipment in the PROW, but to place 120'-150' tall high visibility wireless telecommunication system (WTS) towers in the PROW. These towers would conflict with the City's responsibility to safely manage the PROW for Springfield citizens by creating hazards to traffic safety if constructed in close proximity to the roadway in the PROW. If the Mobilitie Petition is granted, the City and other local governments will be severely inhibited in their ability to control and manage the PROW as a proprietary business function of the City.

Many wireless providers in the City of Springfield, including T-Mobile and Verizon Wireless, have recently been expanding or upgrading WTS facilities in the City to pave the way for 5G. Primarily, the City has seen applications for new standalone 100' or taller WTS towers located on private property. These towers pay market rental rates to the private owners of those sites. It does not appear to be interfering at all with the

deployment of wireless technology in the City of Springfield for private property owners to charge market rent to wireless providers. Rather than following the same process for siting WTS towers used by other providers in the City, Mobilitie asserts a right to locate their facilities in the PROW. Mobilitie also asks the FCC to preempt the City from charging similar rental rates for use of City property as a private owner would charge. Essentially, Mobilitie is asking FCC to give them competitive advantage over other wireless providers whose facilities are located on private property, by requiring that the cost of such towers be subsidized by local taxpayers for the profit of Mobilitie. The City of Springfield is opposed to such an attempt to use the PROWs for private profit through preemption of the City's authority of its own PROW.

In the public notice seeking comment on the Mobilitie Petition, the Commission has requested local governments provide input on the application process for small cell deployment and other wireless facilities, the fees charged for such facilities, and the rejection rate for these facilities and the reasons for rejections. Attached to this comment, please find excerpts from the City of Springfield's Municipal and Development Code dealing with wireless telecommunication systems and structures and devices in the right-of-way: Springfield Municipal Code Sections 3.224 through 3.324, governing placement, location, replacement and removal of devices and structures in the PROW; Springfield Development Code Section 4.3-145, establishing development standards for WTS facilities on public and private property; and Springfield Municipal Code Sections 4.600-4.624 and 4.700-4.716, governing utility licenses and utility license fees and taxes, respectively.

#### Wireless Telecommunication System Application Process.

All telecommunications utilities that provide service to customers in Springfield or have facilities or equipment physically located within the City of Springfield must obtain a utility license from the City. Utility licenses are generally granted in less than 30 days. A utility license is valid for five years and may be renewed. A utility license authorizes a telecommunications utility to provide service or maintain equipment in the City of Springfield, but does not grant specific permission for any particular facility on public or private property.

The Springfield Development Code contains special standards for wireless telecommunication system facilities. See SDC 4.3-145 attached. The Code exempts small cell and DAS installations on utility poles within the City's PROW from requiring land use approval under the Development Code. WTS facilities not falling under this exception require land use approval. "High visibility," and "moderate visibility," WTS towers (traditional cell towers and camouflaged "monopine" cell towers) require Discretionary Use approval and Site Plan Review. Low visibility and stealth WTS facilities only require Site Plan Review except where exempted from land use approval

altogether. Oregon law requires a final decision on these applications to be made within 120 days (ORS 227.178).

For WTS facilities in the PROW, the City requires an encroachment permit or placement permit authorizing entry into the PROW in addition to an executed PROW Use Agreement specifying the terms and conditions under which the provider may maintain facilities in the ROW and imposing insurance and indemnification requirements. An encroachment permit typically is granted within 30 days or less. An encroachment permit authorizes a single facility at a single location. Alternately, a provider may file a telecommunications placement plan describing all facilities it intends to install in the PROW. Thereafter, encroachment permits for individual installations under that plan are reviewed through an expedited process in which all permits are deemed approved within 48 hours of submission, unless the City notifies the provider otherwise.

In 2013, the City significantly amended and updated the Development Code regarding wireless telecommunication system facilities. Since new code provisions were adopted, no WTS facility applications for Discretionary Use or Site Plan Approval have been denied by the City of Springfield, nor have any applications exceeded the 120-day timeline for approval unless permission was granted by the applicant.

#### Fees Charged to Telecommunications Utility/Providers.

Oregon law limits a city's ability to charge fees for land use permits or zone changes to "an amount no more than the actual or average cost to provide that service." In the City's Master Fees and Charges Schedule, adopted by City Council, the relevant fees imposed by the City for WTS facilities and/or small cell deployments include the following:

- Telecommunication License Application Fee and renewal, \$50.
- Discretionary use application for high and moderate visibility WTS facilities, \$4,070 within city limits; \$6,139 outside city limits, but within the City's Urban Growth Boundary (UGB); and \$401 for postage.
- Site plan review for high, moderate, and low visibility WTS and stealth facilities that are not exempt from the Development Code, \$4,857 within city limits; \$5,042 within the UGB; and \$166 postage.
- Encroachment permits for all structures and devices in the PROW, \$301.
- Comprehensive telecommunications placement plan review, \$757.

In addition to these application fees, the City taxes all utilities, including telecommunications utilities, 5% of their gross revenues for services provided to City

customers or using facilities located within the City of Springfield. This tax is not dependent on a utility operating in the PROW. The Mobilitie Petition objects to this form of tax specifically as violating 47 U.S.C. Section 253(c). The City of Springfield's gross revenue tax is not a fee "for use of the public rights of way" and therefore it does not fall under 47 U.S.C. Section 253(c). However, even if it were tied to use of the right-of-way, a gross receipts tax is entirely "fair and reasonable compensation," and because it is assessed at the same level to all telecommunications providers, it is "competitively neutral and non-discriminatory." The Mobilitie Petition on this point should be denied given that the FCC does not have the authority to preempt non-discriminatory local taxes.

The City also may charge rent for attachments to City-owned poles or structures in the PROW or on other public property. These rent charges are a propriety power of the City as a landowner and cannot be preempted by the FCC under its authority in Section 253(c).

The Mobilitie Petition also asserts that FCC should require local governments to prove that their fees are identical across all providers and disclose all fees collected. The City imposes uniform fees and taxes for use of the PROW per the City's Master Fees and Charges Schedule, as noted above, which is adopted by the Springfield City Council through public process. Instead of participating in that public process to determine what fees should be charged by the City, Mobilitie would require the City to affirmatively provide proof to Mobilitie that its fees and charges are justified. This shifting of the burden from a provider to the City would consume staff resources at the expense of local taxpayers.

Under the City's utility fee ordinance, a provider operating in the PROW may negotiate with the City for an alternate fee structure to the 5% gross receipts tax through license agreement or PROW use agreement. By City ordinance, any charges assessed under these voluntary agreements offset the 5% taxes owed. These license agreements and PROW use agreements are public records under Oregon law that are required to be disclosed to the public, except to the extent that *the wireless providers themselves* designate these agreements as "trade secrets." The Mobilitie Petition urges FCC to require cities to disclose contractual details in these PROW use agreements and license agreements potentially in violation of other state and federal laws that protect trade secrets. For that reason, such a requirement would place the City in a "no win" situation of choosing which laws to violate: FCC regulations under the Telecommunications Act, or state and federal laws protecting trade secrets. This is yet another example of Mobilitie's attempt to gain a competitive advantage over other wireless providers, at the cost of the taxpayers of the City of Springfield.

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For the foregoing reasons, the City of Springfield urges the Commission to protect the rights of local governments to manage their own PROW and reject the Mobilitie Petition.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Grimaldi', with a stylized flourish at the end.

Gino Grimaldi  
City Manager